IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 03.08.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.A.No.563 of 2000

1.Gurusamy
2.Rangasamy
3.Senthil
4.Eswaramoorthy
5.Muthukumarasamy
6.Ponnusamy
7.Palani
8.Chinnasamy ..Appellants/Accused 1 to 3 and 5 to 9.

Vs.

The State of Tamil Nadu rep. by
The Inspector of Police,
Gobichettipalayam Police Station,
Erode District. .. Respondent

Prayer:- This appeal has been preferred under Section 374[2] of the Cr.P.C. against the judgment dated 28.06.2000 made in S.C.No.31 of 2000 on the file of the Principal Sessions Judge, Erode.

For Appellant :Mr.AR.L.Sundaresan, Senior Counsel, for Mr.M.K.Vijayaraghavan

For Respondent :Mr.V.R.Balasubramaniam Additional Public Prosecutor

JUDGMENT

This appeal has been preferred against the judgment in S.C.No.31 of 2000 on the file of the Principal Sessions Judge, Erode. The accused, who have been charged and convicted under Section 147 IPC and under Section 3 (ii) of Tamil Nadu Public Property (Prevention of Damages and Loss) Act, 1992, (herein after referred to as 'TNPPD Act') by the trial Court, are the appellants herein.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

2.The short facts of the prosecution case is that on 12.3.1999 at about 11.00 pm to show their displeasure in raising the water tax from 35 paise to Rs.1/65 per 1000 litres to the Lakkampatti punchayat union on the date of occurrence, the accused formed themselves into an unlawful assembly in front of Karattadipalayam junction at Erode-Senthyamangalam main raod, and damaged the gate-valve of the the water pipe leading from Gobichettipalayam panchayat union to Lakkampatti panchayat union and also filled the tank, in which the water is being collected, with sand and stone thereby causing a loss of Rs.5000/- to the Lakkampatti panchayat union.

3.The case was taken on file by the learned trial judge and after furnishing copies under Section 207 of Cr.P.C., to the accused, had framed the charges under Section 147 IPC and under section 3(ii) of TNPPD Act and when questioned the accused pleaded not guilty. Before the trial Court P.W.1 to P.W.8 were examined, Ex.P.1 to Ex.P.7 were exhibited and M.O.1 was marked.

4.P.W.1 is the president of Gobichettipalayam Panchayat Union. According to him, he was informed by the employee of the panchayat union viz. Rajendran on 13.3.1999 that about 6.00 am he found the gate valve of the pipe leading from Gobichettipalayam panchayat union to Lakkampatti panchayat union was damaged and the tank for filling water was also closed with sand and stones and immediately he rushed to the place of the occurrence and preferred a complaint Ex.P.1 with the police.

5.P.W.2-Rajendran is the informant of P.W.1 about the damages caused to the gate valve and to the tank. He would corroborate the evidence of P.W.1 to the effect that when he went to the place of occurrence on 13.3.1999 at about 6.00 am he found the gate valve of the pipe leading from Gobichettipalayam panchayat union to Lakkampatti panchayat union was found broken and the tank intended for collecting the water was filled up with sand and stones and the water reading meter was also found broken and that he had immediately informed this to P.W.1.

6.P.W.3 would depose that on 12.3.1999 at about 11.00 pm while he went near the place of occurrence for attending to the call of nature he had seen M.O.1-tractor with stones and A5 & A6 were indulging in causing damage to the lid of the tank and filled up the tank with sand and stones with the help of other accused.

7.P.W.4 is also a chance witness. According to him, on 12.3.1999 at about 10.30 pm while he was proceeding from Bangalaputhur to Gobichettipalayam he saw a crowd near the place of occurrence and saw M.O.1-tractor parked near the place of occurrence loaded with stones and sand. He has also identified that A5 & A6 broke open the lock and damaged the water tank with the help of iron rod along with 10 or 20 persons and they have also caused damage to the gate valve.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

8.P.W.7 is the then Sub-Inspector of Police, Gobichettipalayam Police Station. According to him, P.W.1 came to the police station on 13.3.1999 at about 1.30 pm and preferred Ex.P.1-complaint, which was registered by him under Gobichettipalayam Police Station Cr.No.88/1999 under Section 430 IPC and under Section 3(ii) of the TNPPD Act. Ex.P.6 is the FIR.

9.P.W.8 is the investigating officer, who had visited the place of occurrence on 14.3.1999 at 5.30 pm and prepared observation mahazar-Ex.P.2 in the presence of P.W.5 and had drawn Ex.P.7-rough sketch. He has examined the witnesses and recorded their statements. He had arrested the A1 on 14.3.1999 at 5.30 pm near Nallagoundanpalayam village and recorded the voluntary confession statement of A1 in the presence of P.W.5. The admissible portion of the confession statement of A1 is Ex.P.3. On the basis of Ex.P.3-confession statement, he had seized M.O.1-tractor, which was parked within the premisses of Lakkampatti panchayat Union office under Ex.P.4-mahazar in the presence of P.W.5. He has made arrangements to assess the value of the damage caused by the accused. Ex.P.5 is the valuation report submitted by P.W.6.

10.P.W.6, the then Health Inspector of Gobichettipalayam, as per the letter of requisition made by the Investigating Officer dated 28.7.1999, has assessed the value of damages caused to the gate valve and the lid of the tank as Rs.5000/- including labour charges and the supervision charges. Ex.P.5 is his valuation report, which was marked subject to objection by otherside.

11.After completing the investigating, P.W.8 has filed the charge sheet against the accused.

12.When incriminating circumstances were put to the accused under Section 313 of Cr.P.C, the accused would deny their complicity with the crime. After going through the oral and documentary evidence, the learned trial Judge has held that the accused are guilty under Section 147 IPC and under Section 3(ii) of TNPPD Act and sentenced them to undergo six months RI under Section 147 IPC and 4 years RI under Section 3(ii) of TNPPD Act, which necessitated the accused to prefer this appeal.

13.Heard the learned senior counsel Mr.AR.L.Sundaresan appearing for the appellants and learned Additional Public Prosecutor Mr.V.R.Balasubramaniam and considered their respective submissions.

14.Now the point for determination in this appeal is whether the findings of the learned trial judge in holding that A1 to 3 and A5 to A9 are guilty under Section 149 and under Section 3(ii) of TNPPD Act is sustainable for the reasons stated in the memorandum of appeal?

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

' 15.The Point:-According to the prosecution on the date of occurrence ie. on 12.3.1999 at about 11.00 pm the accused to show their anguish in respect of the increase of water tax from 30 paise to 1.65 paise per 1000 litres in the year 1968, formed themselves into an unlawful assembly and caused damage to the public property like gate valve, water tank to the tune of Rs.5000/-. P.W.1, who had preferred Ex.P.1-complaint, is not an eye witness to the occurrence. According to him, P.W.2 has informed about the damages to the public property like gate valve and water tank. The case of the prosecution hinges upon the evidence of P.W.3 and P.W.4, who are chance witnesses. According to P.W.3 & P.W.4, A5 & A6 broke open the lid and with the assistance of the other accused, have filled up the water tank with sand and stone and also damaged the water reading meter. But unfortunately in this case not even in the observation mahazar Ex.P.2 the alleged damage to the gate valve, water tank and water reading meter were mentioned. Further the alleged damaged articles like gate valve, water reading meter or the lid of the water tank were also not seized and produced by the Investigating Officer in this case. The prosecution relied on Ex.P.5, the report for assessing the damages produced by P.W.6-Health Officer of Gobichettipalayam Municipality. According to P.W.6, he visited the place of occurrence as per the letter of requisition made by the Investigating Officer on 28.7.1999. He has also referred about the letter dated 28.7.1999 in Ex.P.5 under the reference column. In the cross-examination P.w.6 would admit that Ex.P.5-certificate was issued by him on 3.8.1999. He would say that he prepared Ex.P.5 even on 13.3.1999 itself. But he would admit that he has not mentioned in Ex.P.5, that Ex.P.5 was prepared on 13.3.1999 itself. He would further admit that there are Engineers available in the Gobichettipalayam Municipality to assess the damages and that the Commissioner has got powers to direct any Engineer, Health Officer or Town Planing Officer, to assess the value of the damages. There is no authorisation letter of the Commissioner of the Municipality authorising P.W.6 to assess the damages in this case was produced by him. Under such circumstances, there is absolutely no evidence on record to warrant conviction under Section 147 IPC and under Section 3(ii) of TNPPD Act against the accused. Point is answered accordingly.

16.In fine the appeal is allowed and the conviction and sentence under Section 147 IPC and under Section 3(ii) of TNPPD Act passed by the trial Court in S.C.No.31 of 2000 on the file of the Principal Sessions Judge, Erode, is set aside and the accused are acquitted from all the charges levelled against them. Bail bonds shall stand cancelled.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

ssv

To,
1.The Principal Sessions Judge, Erode.

2.The Public Prosecutor, Madras High,
Madras.

3. The Inspector of Police,
Gobichettipalayam Police Station,
Erode District

Crl.A.No.563 of 2000

RS[CO]
GP/13.8.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/